

DEVELOPMENT OF THE INSTITUTE OF MERGERS AND ACQUISITIONS: HISTORICAL AND LEGAL ASPECT

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***Annotation.** Based on a retrospective analysis of the institution of mergers and acquisitions, the authors distinguish six stages of its formation and development, each of which is characterized by a certain degree of activity in making such transactions. The conclusion is made about the need for further study of mergers and acquisitions as forms of reorganization of economic entities, since in a rapidly developing economic turnover, mergers and acquisitions are permanent.*

***Keywords:** economic turnover, mergers and acquisitions, reorganization of a legal entity, antimonopoly legislation.*

The end of the 19th century can rightly be considered as the beginning of the development of the global market for mergers and acquisitions. The United States became the country where such economic instruments were first applied and it remains the leader in the number of transactions to this day. The concept of "merger and acquisition" (M&A) represents a set of economic processes, causing business and capital increase by transferring control from some companies (smaller in size), to other, the larger ones.

Traditionally, there are two types of mergers: a) consolidation and b) assets pooling. Under *consolidation*, the companies that participate in the merger cease to exist as autonomous (independent) legal entities. In turn, all obligations to counterparties associated with the defunct companies are transferred to the newly formed company. Moreover, the newly formed company becomes the management entity of all the assets of the companies that have become extinct.

The assets pooling implies a different way of merging. Thus, the organizational and legal forms of companies are preserved and they continue their core business, provided for by the statutory documents. However, the owners of such companies must transfer exclusive rights of control over their companies to the newly created one as a contribution to the authorized capital. [1].

An acquisition is a transaction that has a specific purpose to establish ultimate control of the parent company over the business company. Such transactions are carried out by acquiring more than 30% of the authorized capital of an acquiring company. Later this company joins the parent company.

Mergers and acquisitions should be distinguished from a takeover as a form of reorganization of a legal entity. During a takeover (affiliation) one of the companies (the parent company), to which others are going to join, continues its operations, while the rest, the affiliating companies, cease to exist as legal entities and transfer their rights and obligations to the parent company.

Today, in a rapidly developing economic turnover, mergers and acquisitions are of a continuing nature. This state of affairs was not always the case, their emergence and development has its own history.

There are six main stages in the formation and development of M&A transactions, which are characterized by a certain degree of activity in making the transactions.

The first stage dates back to 1897-1904. During that period, M&A transactions gained their greatest popularity in such industries as metallurgy, mechanical engineering, food production, coal and oil mining. Mergers and acquisitions accounted for about 70% of the total volume of transactions in these industries. A distinctive feature of merger transactions was their horizontal type, which implies the amalgamation of companies operating in the same industry and producing a homogeneous group of goods.

As a result, such type of transaction led to a monopoly in certain sectors of the economy. The clearest and earliest example in history is the merger of an American steel company with its competitors, which in 1901 resulted in the newly formed company controlling two-thirds of US steel production. The first stage led to the disappearance of more than two thousand companies, which were replaced by new ones with a higher level of production concentration. Despite the Sherman Antitrust Act, a concomitant reason for such results was the lack of proper control by the antimonopoly authorities of the state.

At that time, financial institutions supported many of the M&A transactions. However, in 1904, due to the collapse of the stock market, these institutions were forced to cease to exist, and, as

a result, they could not ensure the growth of M&A transactions. That marked the end of the first period.

The second period lasted from 1916 to 1929. Its main difference from the first one is the change in the type of mergers, which have acquired a vertical character. That led to the oligopolistic structure of some sectors of the economy. Moreover, the development of antimonopoly legislation contributed to the tightening of control over the transactions carried out by the state. The Sherman Act was more aimed at preventing cartels formation and unfair business operations. For this reason, the Clayton Act was passed in 1914, which had a more dampening effect on M&A transactions and preventing the formation of monopolies. [2]

The number of merger transactions exceeded 4500 and, by the end of the period, the market lost more than ten thousand companies. The companies mainly used borrowed funds to complete transactions. On the one hand, this allowed investors to become profit beneficiaries, but on the other hand, this procedure increased the risk of impairment of value. In 1929, the stock market collapsed again, which entailed much more serious consequences for the country's economy and, as a result, the termination of merger transactions, and subsequently the end of the second period.

The third period lasted from 1965 to 1979 and the active growth of M&A transactions led to the emergence of a large number of conglomerates. The latter accounts for an association of companies that carry out entrepreneurial activities in various sectors of the economy. This was facilitated by even stricter antimonopoly laws, which made it difficult to conduct vertical and horizontal mergers.

In its turn, the fourth period from 1980 to 1991 was aimed at destroying the emerging conglomerates and due to the softening of the antimonopoly legislation, mergers renewed a horizontal character, and many of them were hostile.

The fifth period from 1995 to 2007 is characterized by the growth of mergers and acquisitions in the late 90s. According to Mr. Samedov U.N. "it was stipulated by the widespread of information and telecommunication technologies and the collapse of the USSR, as far as privatization of many state-owned enterprises and their subsequent corporatization played an important role in the post-Soviet formation of the market. With increasing global competition, a massive unification of transnational corporations began in Europe". [3]. The fifth period is also referred to as the era of mega mergers because against this background, a huge number of transactions with the value exceeding 1 billion US dollars were carried out.

The sixth period started in 2008 and continues to the present. The year 2008 became a turning point as the economic crisis caused a change in the development strategy of many entities of the global market, which forced them to abandon such large transactions. At the present stage of development, mergers and acquisitions are regularly carried out in various sectors of the economy

in many countries. However, carrying out such transactions always has its own risks, due to which the likelihood of a profit decrease from a completed transaction increases.

The current state of the Russian market for M&A transactions indicates an increase in the number of such transactions, while a characteristic feature of such an increase is the taking Russian law as applicable by the parties to the transaction. The reason for this is the revision of the norms of contractual and corporate law in Russia. As a result, the Russian legal system acquired instruments that were previously applicable only in English law. Today Russian legislation recognizes practically the entire range of corporate instruments used in M&A transactions available in international practice.

It is therefore clear that for further improvement and development of economic turnover the study of issues associated with mergers and acquisitions should be carried out within the complex practice of their application. These circumstances determine the further need to study M&A transactions as forms of restructuring of business entities.

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